

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

HAROLD E. HARTER,

Plaintiff,

vs.

JOHN DIMURO, *et al.*,

Defendants.

Case No.: 3:18-cv-00048-RCJ-WGC

Order

Before the Court is the Report and Recommendation of United States Magistrate Judge William G. Cobb (ECF No. 82) (the Recommendation) entered on November 25, 2020, recommending that the Court grant in part and deny in part Defendants' Motion for Summary Judgment (ECF No. 70). No objection to the Recommendation has been filed. This action was referred to Magistrate Judge Cobb under 28 U.S.C. § 636(b)(1)(B) and Local Rule IB 1-4 of the Rules of Practice of the United States District Court for the District of Nevada.

The Court has considered the pleadings and memoranda of the parties and other relevant matters of record pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule IB 3-2. The Court accepts and adopts the factual background and the legal standards of the Recommendation. The Court also accepts and adopts the analysis and conclusion recommending dismissal of all but Defendant Boni. The Court however rejects the Recommendation inasmuch as it recommends that the Court deny

1 the motion for summary judgment as to Defendant Boni. The Court finds that summary judgment
2 is also appropriate for Defendant Boni and therefore grants Defendants motion in full.

3 Plaintiff contends that Defendant Boni is liable to him because she approved the diet at the
4 prison as “low sodium,” despite allowing for the menus to have 3,000–4,000 milligrams of sodium.
5 He further contends that this was deliberately indifferent to his medical needs since he has a
6 chronic heart condition for which he has been prescribed a low sodium diet, necessitating intake
7 less than 2,300 milligrams of sodium per day. Plaintiff however has not proven that Defendant
8 Boni had any authority to modify Plaintiff’s diet on an individual basis to meet his particular needs.
9 (See ECF No. 70-10 ¶ 5.) As such, Plaintiff cannot show that Defendant Boni personally
10 participated in the alleged constitutional deprivation of his Eighth Amendment rights—a necessary
11 element of a claim under § 1983. *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989).

12 CONCLUSION

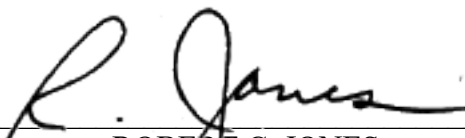
13 IT IS HEREBY ORDERED that the Report and Recommendation (ECF No. 82) is
14 ADOPTED IN PART and REJECTED IN PART.

15 IT IS FURTHER ORDERED that the Motion for Summary Judgment (ECF No. 70) is
16 GRANTED.

17 IT IS FURTHER ORDERED that the Clerk of the Court shall enter judgment and
18 close the case.

19 IT IS SO ORDERED.

20 Dated: March 2, 2021.

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22 
23 ROBERT C. JONES
24 United States District Judge